

IN THE MATTER OF:

Case No. 05-23A

Order Reinstating License

Pursuant to Board rule 282 I.A.C. 11.34, any person whose license has been suspended “may apply to the board for reinstatement in accordance with the terms and conditions of the order of the suspension.” The Board Order issued August 30, 2006, suspended the Respondent’s license for a minimum period of one (1) year. No special terms or requirements, other than the passage of time, were placed upon reinstatement. One (1) year has elapsed and the Board is aware of no reason why the Respondent’s license should not be reinstated.

THEREFORE, the Board grants Mr. Shirk's request and hereby orders that his teaching license is to be reinstated as of the date of this Order.

George J. Moore

George J. Mayer, Ed.D., Executive Director
On behalf of the Board

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:

STEVEN REX SHIRK,

Respondent.

) Case No. 05-23
) DIA No. 06BEE009
) License No. 171091
)
) Final Order
) Revising Proposed Decision
)

This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The hearing was held before Administrative Law Jeffrey D. Farrell on April 12, 2006. On May 5, 2006, Judge Farrell issued a proposed decision. The proposed decision was served upon the Respondent, the Assistant Attorney General prosecuting the case, and the Board. The Board considered the proposed decision at its next regular meeting on June 13, 2006 and initiated review of the proposed decision, pursuant to 282 Iowa Admin. Code 11.28(2), to consider whether the proposed sanction is appropriate in light of the findings.

On August 7, 2006, the Board conducted its review of the proposed decision. Following consideration of the proposed decision and the arguments presented within briefs submitted on behalf of the Respondent and the State, the Board approved a motion to revise the sanction so that the one-year license suspension will commence after issuance of the Board's Final Order. Therefore, the final two paragraphs on page 15 of the proposed decision shall be stricken, and replaced with the following:

After considering all factors and the two violations, I find that respondent's teaching license shall be suspended for one year from the date of issuance of a final order by the Board.

ORDER

The teaching license of respondent Steven Rex Shirk, License No. 171091, is hereby **SUSPENDED for a minimum period of one year**, effective August 8, 2006. In order to reinstate his license at the conclusion of the period of suspension, the Respondent must make application for reinstatement, pursuant to 282 IAC 11.34.

Dated this 30 day of August, 2006.

A handwritten signature in cursive script, appearing to read "George J. Mauret", written over a horizontal line.

George J. Mauret, Ed.D., Executive Director
On behalf of the Board

Copies to counsel of record.

COPY

Iowa Board of Educational Examiners

RECEIVED
EXECUTIVE DIRECTOR
BOARD OF EDUCATION EXAMINERS

MAY 08 2006

In the matter of:)	Case No. 05-23
)	DIA No. 06BEE009
Steven Rex Shirk,)	
License No. 171091,)	
)	PROPOSED DECISION
Respondent.)	

This matter came on for an contested case hearing at the Lucas State Office Building on April 12, 2006. Assistant Attorney General Carolyn Olson represented the State. The State presented John Sauer, Justin Marston, and Daniel Wittenberg as witnesses. The State's exhibits A-I were admitted.

Attorney Gerald Hammond represented respondent Steven Shirk. Mr. Shirk testified on his own behalf. Respondent also presented Bill Hammes, Andy Kroeger, Jacob Dusenberry, and Berdette Tjaden as witnesses. Respondent's exhibit R-1 was admitted.

FINDINGS OF FACT

Introduction: Steven Shirk has been an industrial arts teacher in Iowa for 31 years. He spent his last 26 years teaching at the Wilton Community School District (referred to as "the district" or "Wilton"). Respondent resigned after the district conducted an internal investigation into intent usage on his classroom computer. The investigation revealed that someone used respondent's computer to access pornographic internet websites. (Sauer, respondent testimony).

On June 29, 2005, the superintendent at Wilton filed a complaint with the Board of Educational Examiners (the board). The complaint alleged a number of regulatory violations. At hearing, the State focused on the following three provisions:

1. Falsifying, deliberately misrepresenting, or omitting material information submitted in the course of an official inquiry or investigation (282 IAC 25.3(3)(c));
2. Failing to make reasonable effort to protect the health and safety of students or creating conditions harmful to student learning (282 IAC 25.3(6)(c));
3. Willfully or repeatedly departing from or failing to conform to minimum standards of acceptable and

prevailing educational practice in the state of Iowa (282 IAC 25.3(8)(a)).

The State alleged that respondent violated the second and third provisions by using his classroom computer to view internet porn sites. In the alternative, the State argued that respondent's failure to properly supervise his computer allowed students to view porn sites, in contravention of the second provision. The State alleged that respondent violated the first and third provisions by making untrue statements to school administrators, other teachers, and the public, during the course of the investigation.

Appellant contended that he did not use his computer to visit porn sites. He claimed other people had access to his computer and password. He claimed that he did not know that his computer had been used to access porn until the superintendent told him about the investigation.

School investigation: John Sauer was the superintendent at Wilton for five years from 2000 to 2005. He had also been an administrator at other Iowa schools. He retired from Wilton at the end of the 2005 school year. (Sauer testimony).

Justin Marston is the technical coordinator at Wilton. Mr. Marston is concluding the fifth year in the coordinator position at Wilton. (Marston testimony).

In January of 2005, a broken water pipe caused damage to a number of items in the Wilton computer room, including the server that filtered access to the internet. The school had set system blocks on a number of internet sites, such as computer games, that were unrelated to education. The school did not have a list to show which sites were blocked, so it could not immediately reestablish the same blocks. (Sauer, Marston testimony).

After the school lost its filtering mechanism, Ms. Sauer asked Mr. Marston to check internet usage on a regular basis. Mr. Marston had a program that allowed him to summarize internet hits on all computers within the district. He could then summarize high volume users and sites. For example, Mr. Marston presented a summary from April of 2006 that showed a Google site as the most popular site. (Sauer, Marston testimony; Exhibit I-33).

On or about March 8, 2005, Mr. Marston ran a summary of the most popular internet sites visited by district computers. The third most popular entry was "Redclouds." Mr. Marston was not familiar

with the site, so he personally checked out the site. He discovered that it contained adult forums and pornography. The adult forums primarily consisted of communications from individuals and couples who were seeking out sexual partners. (Marston testimony).

Mr. Marston then attempted to determine which machine or machines were being used to access the Redclouds site. He discovered that the site was accessed from the computer in respondent's classroom. Mr. Marston also discovered that the site had been accessed on multiple occasions for 15 to 45 minutes at a time. Mr. Marston also discovered evidence that respondent's computer was used to access other pornography sites, most prominently a site known as "Freakhole.com." (Marston testimony).

Mr. Marston printed a list showing each hit to a pornography site. The list shows a separate listing if the user accessed a different page or photograph on the same site. The complete list consists of 128 pages of hits. Mr. Marston estimated the total time spent at pornography sites as four hours over a six day period. (Marston testimony; Exhibit H-23A).

Mr. Marston testified that all teachers had a user name and password to access their computer. Teachers also had a user name and password to access the internet. In addition, the Redclouds site required a credit card to access many of the sites reflected on the printout list. However, neither party provided evidence indicating whose credit card was used from respondent's computer. (Marston testimony).

The district also maintained student computers in respondent's classroom. However, the school's computer system would not allow students to access the internet from their computers. (Marston testimony).

Mr. Marston reported his findings to Mr. Sauer. Mr. Sauer testified that he had two initial concerns from an administration standpoint. If respondent was accessing the sites from a school computer, Mr. Sauer was concerned that respondent was violating school policy. Second, if a student was accessing the sites from respondent's computer, Mr. Sauer was concerned about the lack of supervision. (Marston, Sauer testimony).

On March 9, 2005, Mr. Sauer went to respondent's classroom to discuss the matter. Respondent was at his computer when Mr. Sauer walked in. Respondent has a specialized computer desk which allows the monitor to be set back into the desk. No one

could see the monitor unless directly behind the desk. Mr. Sauer asked what respondent was doing, and respondent responded that he was on Ebay. Respondent testified that he frequently searched Ebay for cheap classroom supplies. Mr. Sauer did not personally check the screen to confirm respondent's statement. (Sauer, respondent testimony).

Mr. Sauer and respondent told vastly different accounts as to their conversation during the March 9 meeting in respondent's classroom. They have similar disagreements as to what was said during a second meeting on March 9 (in Mr. Sauer's office) and an early morning meeting on March 10. I ultimately determined that it does not serve great purpose to outline each person's testimony and attempt to determine whose account is more credible. This case can be decided on undisputed facts and the testimony of other more disinterested witnesses.

There are three important undisputed facts that arise from or are connected to the Sauer/respondent meetings of March 9 and 10. First, it is undisputed that Mr. Sauer presented respondent with the district's evidence that respondent's computer was used to access internet pornography sites. Mr. Sauer was upfront about the allegations from the beginning of the first meeting in respondent's classroom. Mr. Sauer immediately put respondent on notice as to the nature and details of the investigation.

Second, respondent never admitted using his computer to access pornography. Mr. Sauer characterized respondent as nervous and emotional at various times during their meetings, but respondent never made a verbal admission. Mr. Sauer acknowledged that respondent could also have shown signs of emotion upon being presented with the evidence, even if respondent was innocent of personally accessing pornography.

Third, early on March 10, respondent downloaded a program called "Historykill" from the internet and used it to attempt to hide the internet usage on his computer. The program did not destroy evidence of internet contacts, but did hide it from the untrained eye. Respondent testified that he used the Historykill program because he did not want any students who used his computer to see references to porn sites. Respondent did not ask Mr. Sauer whether he could use Historykill before he ran it. Mr. Sauer only learned about the use of Historykill from computer analysts after the fact.

Both parties questioned and investigated whether respondent's computer could have been accessed from an outside computer. The

district's experts concluded that there was no possibility that an outside computer could have been used. Respondent did not dispute this conclusion at the hearing. (Respondent testimony).

Bill Hammes taught with respondent at Wilton. He taught agriculture-related classes in a room that is adjacent to respondent's classroom. At approximately 3:00 p.m. on Monday, March 28, 2005, Mr. Hammes found a handwritten note on the keyboard of his classroom computer. Along with the note, he found a document that contained respondent's user name and password. The note, which is written in an extremely juvenile manner, states:

Shirks computer is gone your computer won't take his log on. I guess no mor porn.¹ (sic included).
(Exhibit I-28).

The timing which Mr. Hammes found the note is notable. March 28 was part of the school's Easter holiday, so the building was locked and not accessible by students on that date. Mr. Hammes stated that he was probably in the building on the prior Friday (which was also a school holiday) or Saturday, but did not see the note on that day. Mr. Hammes stated that the school's security system does not allow any access on Sundays. (Hammes testimony).

Respondent resigned on May 9, 2005, after a number of additional meetings and discussions with Mr. Sauer and others. The school board accepted the resignation on the same date. Respondent testified that his attorney told him it may take three years to complete the legal process to maintain his job. Respondent was concerned that the stress of a protracted legal battle would negatively impact his wife, who was undergoing treatment for cancer at the time. Respondent thought the best course was to resign and start new at another school.² (Respondent testimony; Exhibits I-30, I-31).

There was considerable local public interest in the circumstances surrounding respondent's resignation. Respondent received public support in several letters to the editor and editorials in local newspapers. The press reported statements given by respondent.

1 At the time the note was found, respondent's computer had been seized by the district for testing.

2 Respondent was hired by another school for the 2005-06 school year. He voluntarily resigned, per a discussion with the school superintendent, after Mr. Sauer filed the complaint in this case.

and Mr. Sauer. The statements by each do not substantially deviate from the testimony they offered at hearing. (Exhibit F).

Respondent focused his defense at hearing on alibis for at least some of the time periods that pornography was accessed from his computer. Respondent created a chart that showed the ten occasions that his computer was used to access pornography. Respondent explained where he was during each of the time periods. He acknowledged that he cannot provide witnesses to verify his story as to each occasion. However, he did provide witnesses to support his testimony on four of the occasions. The dates and times of the occurrences are:

<u>Date</u>	<u>Times</u>
Feb. 16	10:52 to 11:25 a.m. 2:31 to 2:56 p.m. 5:57 to 6:34 p.m.
Feb. 28	3:05 to 4:13 p.m.
March 1	10:21 to 10:43 a.m.
March 2	7:46 to 8:00 a.m. 12:30 to 12:59 p.m.
March 3	9:41 to 10:14 a.m.
March 4	3:06 to 3:34 p.m.
March 7	4:00 to 4:31 p.m.

(Exhibit R-1).

Respondent explained that he taught from two separate but adjoining rooms. He had a classroom where he instructed in a traditional school setting. Respondent's computer is in the classroom. Respondent also had a shop area which students worked on industrial arts projects. The two rooms are separated by a wall that has windows and a door. Respondent was frequently in the shop area. His computer was visible from some, but not all, areas of the shop. (Respondent testimony).

Respondent encouraged his students to use the internet from his computer. He gave several examples as to legitimate internet use. He taught a business class in which he required students to develop a power point presentation; he required each student to

download animations or sound clips from the internet to improve their presentation. Respondent created another assignment which he had students search for vehicles online to give them real life experience as to buying cars. He allowed students to search Ebay for supplies for class projects. Respondent testified that he allowed students to use his classroom computer while he was in the shop. He testified that he trusted his students, and did not closely monitor them. (Respondent testimony).

Respondent testified that he often left his computer logged on when he was not in the classroom or the shop. He worked out in the school weight room nearly every Monday, Wednesday, and Friday from approximately 3:00 p.m. to 5:00 p.m. He often returned to the classroom before going home, but he sometimes forgot to turn off his computer before leaving for the day. (Respondent testimony).

Jacob Dusenberry, who was a junior at Wilton at the time, testified regarding the February 28, 2005 occurrence. The district's records indicate that respondent's computer was used to access pornography from 3:05 to 4:13 p.m. Mr. Dusenberry recalled respondent being in the school's weight room when he arrived at 3:15 p.m. The date stood out to Mr. Dusenberry because respondent and other students were discussing respondent's birthday of February 29, with the obligatory leap year jokes and comments. Mr. Dusenberry testified that respondent was still in the weight room when he left around 4:00 p.m. (Dusenberry testimony; exhibit R-1).

Andy Kroeger, who was a junior at Wilton at the time, testified regarding the March 4 occurrence. The district's records indicate that respondent's computer was used to access pornography from 3:06 to 3:34 p.m. Mr. Kroeger testified that the March 4 date was significant because respondent verified that he lifted a personal best on that date. The school has a weight room director who recorded students' progress. Mr. Kroeger stated that the director confirmed the date and time as March 4. Mr. Kroeger recalled that he was in the weight room right after school ended at 3:00 p.m., and that respondent was still there after he left between 4:00 and 4:30 p.m. (Kroeger testimony).

Berdette Tjaden, who is a friend of respondent, testified regarding one of the February 16 occurrences. The district's records indicate that respondent's computer was used to access pornography from 2:31 to 2:56 p.m. Mr. Tjaden keeps horses at respondent's barn. He typically stopped at the school to check in with respondent after he did chores early in the afternoon.

Mr. Tjaden stopped by respondent's classroom at approximately 2:30 p.m. Respondent was not in the classroom, but four students were. Mr. Tjaden testified that they said it was okay for them to be there. The students were in the middle of the classroom - they were not near respondent's computer desk. Mr. Tjaden stated that he left a message with another teacher and left the school. The day was notable because classes ended early at 2:00 p.m. for conferences that afternoon and evening. Respondent testified that he did his weight work immediately after classes were dismissed at 2:00. (Tjaden, respondent testimony).

Mr. Tjaden also testified regarding the March 7 occurrence. The district's records indicate that respondent's computer was used to access pornography from 4:00 to 4:31 p.m. Mr. Tjaden testified that respondent told him on March 6 that was forgoing his usual workout on March 7 to meet his insurance agent after school. Respondent told Mr. Tjaden he would come home immediately after that meeting. Mr. Tjaden testified that respondent arrived home after 4:00 p.m. Respondent provided a letter from his agent stating that they met for a financial review from 3:35 until approximately 4:05 p.m. That letter did not contain a date, but respondent testified the meeting occurred on March 7. Mr. Tjaden stated that he talked to respondent until he returned home around 5:00 p.m. (Tjaden testimony; exhibit E).

Respondent has various explanations for the other occurrences:

Mid-morning on February 16, and March 1 and 3 - Respondent testified that he was working in the shop.

5:57 p.m. on February 16 - Respondent stated that he left school at 6:00 p.m. because his conferences were done; he recalled the time because spectators were coming into the building for a basketball game. He testified that he left from the main school building, and had not been in his classroom for several minutes before he left.

12:30 p.m. on March 2 - Respondent stated that he was at lunch in the school cafeteria, per his standard practice.

7:46 a.m. on March 2 - Respondent stated that he was praying in the school greenhouse. Respondent recalled the date because his wife had a chemotherapy treatment scheduled for March 4. Respondent liked to meditate in the greenhouse because it was calm and serene.

CONCLUSIONS OF LAW

The Iowa Board of Educational Examiners (the board) was created to regulate the teaching profession in Iowa.³ The board grants licenses to applicants who meet standards created by the board. The board is required to adopt a code of professional rights and responsibilities, practices, and ethics. The board is responsible to enforce its regulatory standards by initiating disciplinary action against an licensee who violates the standards. The board's code of professional conduct and ethics is set forth in 282 IAC chapter 25.

The board may refer a licensing case to an administrative law judge (ALJ) employed by the Iowa Department of Inspections and Appeals to conduct a contested case hearing.⁴ In the event the presiding officer or the board finds a violation, it has an array of disciplinary options ranging from a public reprimand to license revocation.⁵

Use of a school computer to assess pornography: The board's regulations prohibit teachers from willfully or repeatedly departing from or failing to conform to minimum standards of acceptable and prevailing educational practice in Iowa.⁶ There is no acceptable standard of practice that would allow a teacher to use a school computer to make hundreds of hits on pornographic internet sites. Accordingly, if I find that respondent used his school computer to access pornography, I must find he violated the board's regulation. The question is whether appellant did what the State alleged.

Respondent's defense theory is based on a presumption that the same person or group was involved in using his computer. Respondent presented independent witnesses and evidence showing his whereabouts on four of the ten occasions. If the same person or group accessed the porn, it necessarily follows that he was not present on the other six occasions.

Respondent's theory is logical and rational. Only two primary websites were accessed, so it is reasonable to believe that the same person or persons were involved. It is more believable that respondent's computer was used for porn access by either

3 Iowa Code section 272.2.

4 282 IAC 11.8.

5 Iowa Code section 272.2(4); 282 IAC 11.33.

6 282 IAC 25.3(8)(a).

respondent or his students, but not independently and unknowingly by both.⁷

Respondent's alibi witnesses were credible. Jacob Dusenberry testified that he recalled respondent in the weight room on February 28 because he remembered the discussion about respondent's leap year birthday. Mr. Dusenberry knew what time he was in the weight room because he always went right after school got out at 3:00 p.m. There is no reason to question the veracity of Mr. Dusenberry's testimony. This testimony shows that respondent was not at his computer when pornography was accessed from 3:05 to 4:13 p.m. on February 28, 2005.

Andy Kroeger provided similar testimony regarding the March 4 occurrence. Mr. Kroeger recalled the respondent verified his personal best in the bench press. Mr. Kroeger checked the weight room records, which confirmed the March 4 date. There is no reason to question the veracity of Mr. Kroeger's testimony. It should be noted that respondent does not hold a position of authority over either student; he does not currently teach either and both are seniors that will not be taught by respondent again.

Berdette Tjaden's testimony likewise supports respondent's claims. On one of the occasions, he visited respondent's classroom to find him absent (due to early dismissal), but students present in the room. On the other occasion, he met respondent at respondent's home. Mr. Tjaden is a friend of respondent, but there is no reason to believe that he made false statements. He appeared to be credible when testifying at the hearing.

There are two pieces of evidence that are troublesome when considering respondent's defense. First and foremost, respondent used a program called Historykill on March 10 to hide or destroy evidence of internet access on his computer. Respondent used Historykill early in the morning after having two meetings with Superintendent Sauer about respondent's computer usage. Respondent's action makes it look like he was hiding or destroying evidence, even though no evidence was actually lost. If he was innocent of inappropriate internet usage, there would seemingly be no reason for him to take such action.

Respondent stated that he ran Historykill because he did not want any students to see references to porn sites on his computer. However, he did not ask Mr. Sauer for permission before using the

⁷ But see the discussion on page 12.

program, notwithstanding that he knew there was a pending investigation. Again, one would expect an innocent person to talk to the administrator to discuss how to handle any additional student use of the computer.

Even more troubling is respondent's intent to allow students to continue to use his computer to access the internet. If respondent was innocent, he had to suspect that a student or group of students were the culprit. It is staggering to think that a long-time teacher who had just been shown 128 pages of internet porn hits from his computer would even think about allowing students to continue using his computer. The fact that respondent did not have that concern could be viewed as evidence of his own guilt.

Respondent argued that his action should not be viewed as destruction of evidence because he knew that Mr. Sauer had already printed a hard copy of the internet listings. I cannot accept this explanation. According to respondent's testimony, Mr. Sauer told him on March 9 that he might be terminated for accessing pornography. Respondent clearly knew that the situation was serious. His action has to be viewed as an attempt to destroy or hide evidence.

The second piece of evidence that gives me concern is the note left on Bill Hammes' computer. The note literally states that the writer could not access any more porn because respondent's computer was gone and respondent's log on would not work from Mr. Hammes' computer. It was clearly written in a manner to disguise the handwriting of the writer. I can only come to two conclusions regarding the significance of the note: 1) a student or other person wanted to identify him or her or themselves as the person or persons who used respondent's computer, or 2) respondent or someone on his behalf created the note as a guise to support respondent's innocence.

I asked the attorneys during the hearing to comment on the significance of the note. Both stated that it should not be given great significance because it is not clear who left it. I would agree with the attorneys, but am concerned with the timing with which it was found. Mr. Hammes found the note on a Monday when the school was locked. He stated that the note was not at his desk when he was in the school earlier during the weekend. The school was locked throughout the holiday weekend, so no students could get in. Staff, on the other hand, had access to the school throughout the holiday weekend, other than Sunday. This means that respondent had access to Mr. Hammes' classroom

during the time period the note was placed there, but students did not. This makes it more likely that respondent created the note and left it on Mr. Hammes' computer.

The facts of this case lead to an unusual contrast of evidence. On one hand, respondent submitted strong and persuasive alibi evidence regarding four of the ten occasions. His theory that his proof regarding the four occasions also supports his innocence on the six remaining occasions is logical. On the other hand, there is conclusive evidence that respondent attempted to hide or destroy evidence during the investigation, and strong evidence that respondent (or someone on his behalf) fabricated evidence and placed it in a location where it would be provided to the administration.

This is a difficult decision, but I find that respondent's alibi evidence showed that he did not personally access the porn sites. The alibi evidence shows that respondent was not in his classroom during time periods that the computer was being used to access porn. Simply put, if he was not there, it does not matter how guilty he made himself look through other actions.

I considered the possibility that respondent may have been part of a group, with a student or students, that accessed porn. This theory could explain why there was considerable activity from the computer, yet respondent has strong alibis for some of the occurrences. However, there is not a preponderance of evidence to support this theory because there is no evidence showing that type of nexus between respondent and another person or group.

Respondent's conduct regarding his use of Historykill (and possibly the note left at Mr. Hammes' desk) can be harmonized with my conclusion that he did not personally access porn. Respondent and Mr. Sauer had prior conflicts. Respondent thought Mr. Sauer was out to get rid of him. The very fact that the school found that respondent's computer was being used as an internet porn hub may have been distressing to respondent, even if he was not personally responsible for accessing porn. Respondent may have decided, albeit unwisely and wrongly, to use Historykill because he felt he would be held accountable even if he was not the one who accessed the websites.

In summary, there is not a preponderance of evidence to find that respondent violated the board's regulations by personally using his school computer to access pornography websites.

Unreasonable supervision of a computer: The board's regulations prohibit a licensee from failing to make reasonable efforts to protect the health and safety of a student.⁸ It is clearly contrary to student welfare to allow them to use school computers to access internet porn sites. There is also no question that, if respondent did not access the sites from his classroom computer, a student or students must be the culprit(s). The only real question is whether respondent took reasonable efforts to prevent students from using his computer to look at porn.

The overwhelming weight of the evidence shows that respondent did not reasonably supervise his computer. He encouraged students to use the internet on his computer. Respondent was frequently in the shop class next door while students were on his computer. The computer monitor was set back into respondent's desk, so a student would have time to exit a porn site as respondent returned to his classroom. Respondent frequently failed to log off or shut off his computer after he left the classroom at the end of the day. He had a regimented routine of working out in the school weight room from 3:00 to 5:00 p.m. on Mondays, Wednesdays and Fridays. Respondent's students knew his routine and would have had free access to use his computer after school on those dates. Even if respondent had logged off, he kept his user name and password on a sheet of paper at his computer desk.

Respondent's response to this allegation is that he trusted his students. Trust is often a fine quality, but we expect our teachers to do better than that - we expect them to monitor our children. Respondent had 100 different students on his teaching load; it is completely unrealistic for him to think that at least one of them would not take advantage of unfettered internet access. The exhibits show that respondent allowed students to use his computer to access porn on ten occasions for a total of at least 5 hours and 20 minutes over less than a month period. There is no evidence that respondent placed any real checks on his students' internet use. Respondent committed a violation of the above-cited regulation.

Respondent's conduct during the investigation: The board may discipline a licensee who falsifies, deliberately misrepresents, or omits material information during the course of an official investigation.⁹ A licensee may also be charged with a violation concerning the minimum standards of acceptable practice standard for inappropriate conduct during an investigation.

8 282 IAC 25.3(6)(c).

9 282 IAC 25.3(3)(c).

In this count, the State focused on respondent's conversations with the press, colleagues, and friends. I do not find a violation with regard to this activity. Respondent was a popular long-time teacher in a small community. He confided in friends and colleagues once he was presented with the district's findings on his computer. It is not surprising that word of the findings spread quickly among the community. It is also not surprising that members of the community expressed support for respondent. Respondent himself gave a statement to the newspaper; his statement was not materially different from his testimony at hearing. Mr. Sauer likewise had the opportunity to make statements to the press and district employees. The parties' stories do not match, but that does not mean that respondent deliberately represented facts during the course of the investigation.

However, respondent did violate the board's rules by running the Historykill program on his computer during the course of the district's investigation. Respondent's action had the intent and/or the potential of destroying or hiding evidence directly relevant to the case. Respondent's action is akin to falsifying or omitting material information, and it certainly is a violation of the minimum standards expected of a teacher in the profession.

SANCTION

A professional licensing board has broad authority to impose sanctions against its licensees.¹⁰ The purpose of statutory licensing schemes is to protect the health, safety and welfare of the people of Iowa. The courts construe licensing statutes liberally to carry out that purpose.

The fact that a student used a teacher's computer to access internet porn, in and of itself, should not always require a significant sanction. Each violation must be judged in context of the surrounding facts. However, it is critical to remember the public charge is ultimately to protect the welfare of Iowa's students.

I am extremely concerned about respondent's lack of insight in this case. The record shows that respondent's computer was used to access porn on several days over a short period of time. The

¹⁰ *Burns v. Board of Nursing*, 528 N.W.2d 602, 604 (Iowa 1995) citing *Board of Dental Examiners v. Hufford*, 461 N.W.2d 194, 202 (Iowa 1990).

computer was used at various points in the day. Respondent showed no real acceptance of responsibility for his utter lack of supervision. He provided no testimony about how he would better monitor student computer use in the future.

Respondent's attitude is best exemplified by his statement as to why he ran the Historykill program: he wanted to hide the internet porn usage from students as they continued to use his computer. Respondent's first reaction should have revoke student computer use until he or the school determined what happened. Instead, respondent would have continued to allow unmonitored use.

The use of the Historykill program itself magnifies the necessary sanction. The use of Historykill was inexcusable, and was designed to hurt the district's investigation. The board cannot tolerate any attempts by teachers to jeopardize ongoing investigations by hiding or destroying evidence. A serious sanction is necessary.

After considering all factors and the two violations, I find that respondent's teaching license shall be suspended for one year. However, in determining the effective date of the suspension, I find that it should be made retroactive to the filing of the complaint. Respondent had a teaching job for the 2005-06 school year, but lost that job after Mr. Sauer filed the complaint in this case. Considering the timing of this ruling and the board's review, almost any suspension of any length would essentially prohibit respondent from obtaining a job for a second school year. That result would be too severe. Some schools may refuse to hire respondent based on the regulatory violations established in this case, but those decisions will be a product of respondent's record rather than timing of the sanction.

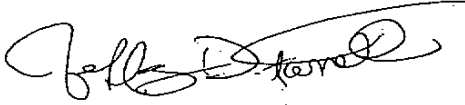
ORDER

The teaching license of respondent Steven Rex Shirk, License No. 171091, is hereby suspended for one year, effective from June 29, 2005.

Case No. 05-23

Page No. 16

Signed this 5th day of May, 2006.



Jeffrey D. Farrell
Administrative Law Judge

cc: AGO - Carolyn Olson
Attorney - Gerald Hammond
BEE - George Mauer

Appeal Rights

Respondent may appeal this proposed decision to the Iowa Board of Educational Examiners pursuant to 282 IAC 11.28.